

DEPARTMENT OF ENVIRONMENTAL QUALITY

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David K. Paylor Director

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MINUTES STATE WATER CONTROL BOARD

April 14, 2011
Department of Environmental Quality Offices

2nd Floor Training Room

629 East Main Street
Richmond, Virginia

Board Members Present:

W. Shelton Miles, III, Chair Lou Ann Jessee Wallace Roberta A. Kellam William A Pruitt Robert H. Wayland, III, Vice-Chair (Mr. Wayland did not go on the tour) William B. Bott Robert L. Dunn

Staff Present:

David K. Paylor, Director Department of Environmental Quality

Cindy M. Berndt
Department of Environmental Quality

Attorney General's Office:

John Butcher, Special Assistant Attorney General

- 1) The attached minutes summarize activities that took place at this Board Meeting.
- 2) The meeting was convened on Thursday, April 14, 2011, at 9:33 a.m., recessed at 11:58 a.m., reconvened at 1:40 p.m. at the Henrico County Water Reclamation Facility for a tour of the facility and a biosolids application demonstration, and adjourned at 3:12 p.m.

Approved Minute No.1 Aug. 4,2011



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 14, 2011

MINUTE NO. 1 - Minutes

Douglas W. Domenech

Secretary of Natural Resources

The Board approved the Minutes from the February 4, 2011, meeting as contained in the Board book.

Cindy M. Berndt



DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

Douglas W. Domenech

Secretary of Natural Resources

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David K. Paylor Director

Thomas A. Faha Regional Director

EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 14, 2011

Minute No. 2 – Issuance of VWP Individual Permit No. 10-1256 – Virginia Electric Power Company dba Dominion Virginia Power – Part I (Surface Water Construction Related Impacts), Unit 3 at Dominion's North Anna Power Station – Louisa County

Issuance of VWP Individual Permit No. 10-1496 – Virginia Electric Power Company dba Dominion Virginia Power – Part II (Minor Surface Water Withdrawal for Construction Related Activities), Unit 3 at Dominion's North Anna Power Station – Louisa County

The project was presented before the State Water Control Board (SWCB) on April 14, 2011. DEQ staff presented jointly the proposed issuance of a Virginia Water Protection Individual Permits for Part I – Surface Water Construction Related Impacts (VWP Permit No. 10-1256) and Part II – Minor Surface Water Withdrawal for Construction Related Activities (VWP Permit No. 10-1496) of the proposed Unit 3 at Dominion's North Anna Power Station project. Parts I and II are two of three applications submitted for the proposed project. Part III application (Joint Permit Application No. 10-2001) for a major surface water withdrawal for operational activities and lake level rise was still under review by staff and therefore, not presented to the SWCB during this meeting. Following staff's presentation, the SWCB heard from the following five speakers from the public:

- Mr. Robert Hare represented the applicant. Mr. Hare's statement included thanking the SWCB for hearing the two permits and addressed the reason for submittal of three applications and the need for the two permits before the SWCB.
- Mr. Harry Ruth represented the Friends of Lake Anna (FOLA). Mr. Ruth's comments addressed concerns regarding the following topics: lake level, lake management, request for a comprehensive impact study of the lake, effect permits may have on recreational use of lake, potential problems with nuclear power in light of Japan's nuclear problems following the tsunami, water permits are being processed in a piece-meal fashion, the litigation of the VPDES permit for the facility and breaching the berm for the intake structure for Unit 3.
- Mr. Dan Beyers, member of the Louisa County Board of Supervisors, stated his presence was to represent his district, not his Board. He indicated he received concerns from his constituents on the proposed project. He requested before issuance, consideration be given to better lake level management and that lessons learned from Japan's nuclear problems following the tsunami be

considered and incorporated in to the proposed new reactor. Mr. Beyers requested the SWCB give the citizen's comments the same level of diligence as if they were residents of the Lake Anna area.

- Mr. Willie Gentry, chairman of the Louisa County Board of Supervisors, spoke saying he supported the concerns of FOLA. His main comment was informing the SWCB of the County's need and desire to use Lake Anna as a source of drinking water for the growing region. He indicated the proposed withdrawal would be approximately 430,000 gallons per day, which he said would be minimal in light of the volume of construction withdrawal.
- Mr. John Farmer, a private citizen, was a former Dominion employee. Mr. Farmer said he supported the permits and the project as it will address the power deficiency in Virginia.

After hearing from the citizens, the SWCB requested staff present their recommendation. Staff recommended that the SWCB find that the permits had been prepared in conformance with the applicable statues, regulations and agency practices, all public comments to the permits have been considered, and the limits and conditions in the permits have been established to ensure the proposed activities are preformed in a manner that protects beneficial uses. Staff recommended that the SWCB approve the permits for Parts I and II as presented in their SWCB package and authorize the Director to issue the permits as approved by the SWCB.

Mr. John Butcher, an attorney from the Office of the Attorney General who provides counsel for the SWCB, recommended the inclusion of a fifth finding to Section No. 16, now No. 17, (Staff Findings and Recommendation) of the fact sheets for both permits and that the SWCB approve the findings. Specifically, he recommended that the following language be added:

The draft permit reflects the required consultation with and full consideration of the written recommendations of the Virginia Marine Resources Commission, the Virginia Department of Health, the Virginia Department of Conservation and Recreation and the Virginia Department of Game and Inland Fisheries. The staff invited, but did not receive, comments from the Virginia Department Agriculture of Consumer Services.

Board Decision

The SWCB, based on the SWCB book material and presentations at the meeting, unanimously:

- 1. Found that the permits had been prepared in conformance with the applicable statues, regulations and agency practices, all public comments to the permits have been considered, and the limits and conditions in the permits have been established to ensure the proposed activities are preformed in a manner that protects beneficial uses;
- 2. Directed that the fifth finding suggested by legal counsel be added to the fact sheet for both permits;
- 3. Approved, as modified, the findings contained in the fact sheets for both permits;
- 4. Approved the permits for Parts I and II as presented; and
- 5. Authorized the Director to issue the permits as approved by the Board.

Thomas A. Faha

Director, Northern Regional Office



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 14, 2011

MINUTE NO. 3 -

General VPDES Watershed Permit for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia (9 VAC 25-820)

The staff recommended that the Board authorize a notice of public comment period and public hearing on the General VPDES Watershed Permit for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia (9 VAC 25-820) that were presented in the Board meeting package. The staff also recommended that the Board authorize the staff to serve as hearing officer at the public hearings.

Board Decision

Based on the briefing material and the staff presentation, the Board voted unanimously to authorize a notice of public comment period and to hold public hearings for the General VPDES Watershed Permit for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia (9 VAC 25-820). The Board also voted unanimously to authorize the staff to serve as hearing officer at the public hearings.

Ellen Gilinsky, Ph.D. Director, Water Division

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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON April 14, 2011

MINUTE NO. 4 -

General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges Resulting from the Application of Pesticides to Surface Waters, 9VAC25-800

The staff recommended that the board affirm the Director's suspension of the General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges Resulting from the Application of Pesticides to Surface Waters, 9VAC25-800 and then to amend and readopt this general permit regulation with a revised effective and the expiration date. The staff also recommended that the board affirm that it will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision of this regulation, as provided by the administrative process act. Lastly, the staff recommended the board direct the Director to take further actions should the courts or Congress change the requirements for this regulation.

Board Decision

Based on the briefing material and the staff presentation, the Board voted unanimously to:

- 1. Affirm the Director's suspension of the VPDES General Permit for Discharges Resulting from the Application of Pesticides to Surface Waters, 9VAC25-800;
- 2. Amend and readopt the VPDES General Permit for Discharges Resulting from the Application of Pesticides to Surface Waters, 9VAC25-800 with an effective date of October 31, 2011, and an expiration date to December 31, 2013;
- 3. Affirm that it will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision of this regulation, as provided by the Administrative Process Act;
- 4. Direct the Director to suspend the effective date of the general permit regulation should the 6^{th} Circuit Court of Appeals further delay implementation of their decision; and
- 5. Direct the Director to withdraw the general permit regulation if congressional action repeals or negates authority for the rule.

Ellen Gilinsky, Ph.D.

Director, Water Division



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 14, 2011

MINUTE NO. 5 - Report on Facilities in Significant Noncompliance

Melanie Davenport, Director of the Department's Enforcement Division, reported to the Board that there was one regulated party, the City of Fredericksburg, to be reported as being in significant noncompliance for the quarter ending September 30, 2010. She additionally reported that Fredericksburg's compliance issues were to be addressed in a special order which should be presented to the Board for approval at its next quarterly meeting.

The Board accepted the report.

Melanie D. Davenport, Director



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 14, 2011

MINUTE NO. 6 - VPDES Consent Special Orders

Douglas W. Domenech

Secretary of Natural Resources

Melanie Davenport, Director of the Department's Enforcement Division, presented to the Board the Consent Special Orders for:

- 1. Chesapeake Grain Company, Inc.
- 2. Courtland USA, LLC
- 3. Virginia Peninsulas Public Service Authority

The Board unanimously approved the Orders and further authorized the Department's Director to execute the Orders on the Board's behalf and to refer violations of the Orders to the Office of the Attorney General for appropriate legal action.

Melanie D. Davenport, Director



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MINUTE NO. 7 - VWP Consent Special Order

Melanie Davenport, Director of the Department's Enforcement Division, presented to the Board the Consent Special Order for Francis M. Barlow, Jr. The Board unanimously approved the Order and further authorized the Department's Director to execute the Order on the Board's behalf and to refer violations of the Order to the Office of the Attorney General for appropriate legal action.

Melanie D. Davenport, Director Division of Enforcement



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MINUTE NO. 8 - UST/AST/Other Consent Special Orders

Melanie Davenport, Director of the Department's Enforcement Division, presented to the Board the Consent Special Orders for:

1. Ammar's, Inc.

Douglas W. Domenech

Secretary of Natural Resources

2. Pilot Travel Centers, LLC

The Board unanimously approved the Orders and further authorized the Department's Director to execute the Orders on the Board's behalf and to refer violations of the Orders to the Office of the Attorney General for appropriate legal action.

Melanie D. Davenport, Director



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MINUTE NO. 9 - Public Forum

Mr. John Martin appeared to follow up to previous appearances before the Board and update the Board on his concerns regarding the Charlottesville area water supply plan.

Cindy M. Berndt



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MINUTE NO. 10- Merck Settlement

Alan Pollock, Manager of the Office of Water Quality Programs, summarized a proposal for a settlement agreement of the appeal by the Chesapeake Bay Foundation and the Virginia State Waterman's Association regarding the Board's action in April 2009 to increase the nutrient waste load allocations for the discharge of treated wastewater into the Shenandoah River by Merck & Company, Inc., located in Rockingham County.

Mr. Pollock noted that the Board-approved increased nutrient allocations for Merck are included in the Chesapeake Bay TMDL issued by EPA in December 2010. He also reviewed the wording of the proposed settlement that would revise the "footnote" for Merck contained in 9 VAC 25-720.

In response to a question from Board member Pruitt, staff verified that the one attorney, Peggy Sanner, who participated in developing the proposed settlement agreement, represented both the Chesapeake Bay Foundation and the Virginia State Waterman's Association.

Decision:

The board, by unanimous vote, approved the proposed settlement agreement of the appeal to revisions of the Merck-Stonewall nutrient allocations in 9VAC25-720.

Ellen Gilinsky, Ph.D.

Director, Water Division

Ellen Delinstery



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 14, 2011

MINUTE 11 – Final Approval of Stormwater Loan Program Guidelines

Douglas W. Domenech

Secretary of Natural Resources

Mr. Walter Gills, Program Manager of the Department's Construction Assistance Program, made a presentation to the Board based on a memorandum dated March 17, 2011. The memorandum identified the staff's recommendation for approval of the revised Stormwater Loan Program Guidelines for implementation.

Mr. Gills reminded the Board that they had authorized the staff to present the draft Stormwater Loan Program Guidelines to the public for their review and comment at their December, 2010 meeting. A public meeting was held on February 16, 2011 and no adverse comments were received. Mr. Gills explained that the Department of Conservation and Recreation (DCR) had made a few recommendations regarding minor language clarifications and the substitute of the Effectiveness of Stormwater Controls for the Readiness to Proceed ranking criteria. He stated that the staff agreed with all of DCR's recommendations and had incorporated them into the final version being recommended for approval.

Board Decision: The Board voted unanimously to approve the revised Stormwater Loan Program Guidelines for implementation.

Walter A. Gills

Program Manager

Construction Assistance Program



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MINUTE NO. 12 - Staff Update on Tomato Plasticulture Memorandum of Agreement

Melanie D. Davenport, Director of the Division of Enforcement, updated the Board at its request on implementation of the September 2010 Memorandum of Agreement ("MOA") between Eastern Shore tomato growers and the Eastern Shore Soil and Water Conservation District ("ESSWCD").

Ms. Davenport reported that the growers and the ESSWCD had met all of the commitments and timeframes to date set out in the MOA. She also reported that a number of field site visits were completed and that neither the ESSWCD nor the Agriculture Stewardship Program had received any complaints over the winter. The Board received the report and acknowledged the work that has been accomplished by the ESSWCD and the growers. In addition, based on comments from the Board, staff advised the Board that information about the MOA will be placed on the DEQ website along with a link to the ESSWCD website where the most current information and notice of meetings of the Water Quality Committee could be tracked by the public.

Melanie D. Davenport

Director



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MINUTE NO. 13 - Division Director's Report

The Board received a report from Dr. Ellen Gilinsky, Water Division Director. Dr. Gilinsky advised the Board on the status of the TMDL Consent Decree and presented a petition from the National Park Service to designate a portion of Bull Run as Tier III Exceptional State Waters.

Cindy M. Berndt

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MINUTE NO. 14 - Legislative Update

The Board received a report from Mr. Jefferson D. Reynolds, Water Policy Advisor, on the 2011 General Assembly Session.

Jefferson D. Reynolds



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MINUTE NO. 15 – Future Meetings

The Board cancelled the June 20-21, 2011, date and set August 4-5, 2011, as the date of their next meeting.

Cindy M. Berndt

[Note: New schedule for the remainder of the year is: August 4-5, September 22-23, October 27-28 and December 8-9]



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER **CONTROL BOARD AT ITS MEETING ON APRIL 14, 2011**

MINUTE NO. 16 - Tour

The Board members, except for Mr. Wayland, toured the Henrico Water Reclamation Facility and visited a nearby farm to see a biosolids application.